

North Smithfield Zoning Board

September 16, 2008

Kendall Dean School

83 Greene Street, Slatersville, RI

The Chair called the meeting to order at 7:00 pm.

I. Roll Call

Present: Chair Vincent Marcantonio, Bill Juhr, Guy Denizard, Stephen Kearns, and Mario DiNunzio. Absent: Steven Scarpelli. Also present were Building Official Bob Benoit, Assistant Solicitor Bob Rossi, and a court stenographer from Allied Court Reporters.

II. Disclosure of no compensation or pension credits received by the board members.

III. Approval of Minutes—August 19, 2008

The Chair stated that he had some corrections to one section of the minutes. He will forward the corrections to the clerk. Mr. Juhr said he would like to wait until reviewing the corrections before voting to approve the minutes. The Chair will forward the corrections to the clerk and the Board will vote to approve the minutes of August 19, 2008 at the next meeting.

IV. Continued application of Joe Jenks (owner Mary Zurowski), requesting to construct a building to be used as a religious institution, which requires a Special Use Permit, per section 5.4.4, subsection 5. Locus is 1054 Victory Highway, Plat 1, Lots 141 & 151.

Attorney John Shekarchi was present for the applicant. He said that the applicant was at the meeting to find out the firm chosen for the peer review of the traffic study and to present further information about the traffic study to the Board. The Chair asked if any of the abutters had contacted Jacinda Russell regarding having a FHA traffic study conducted. Brad Sudol stated that he had spoken with his attorney Charles Reilly, who had spoken to Jacinda Russell, but Mr. Sudol said he is not sure of specifics but believes that the FHA would get involved.

The applicant submitted the following additional information as requested by the Board. The information was marked as part of the record. The exhibits were: P15) Road Profile Sight Distance Analysis, P16) Traffic Impact Analysis, revised September 2008, including appendices, notes, and memos, P17) Traffic Impact Analysis Backup Material, P18) Memo regarding the applicability of the Religious Land Use Act, dated August 25, 2008, submitted by Mr. Shekarchi at Mr. Rossi's request, P19) Revised Site Plan, dated September 15, 2008, P20) Stormwater Management Report, dated September 16, 2008

The Board also marked some material for the record: B2) Letter to Public Safety Commission, dated August 22, 2008 from the Board, asking for the commission's opinion on the safety issues with regard to this application, B3) Letter to Public Safety Commission, dated August 22, 2008 from the Board, asking the commission to request a road safety audit from the Federal Highway Administration, B4) letter from the Town Clerk to Mr. Marcantonio, dated September 3, 2008.

Mr. Juhr asked if Mr. Reilly has a copy of the memo from Mr. Shekarchi (P18). Mr. Rossi stated that the memo is part of the record and anyone can see all records and exhibits. He also stated that since Mr. Reilly is representing the abutters, he can present his opinion to the Board on the applicability of the Religious Land Use Act. Mr. Shekarchi said that he would send a copy of the memo to Mr. Reilly.

Mr. Juhr asked engineer Eric Bazzett to summarize the changes in the revised site plan. Mr. Bazzett stated that the driveway was moved to a location that corresponds with the revised traffic study, approximately 40 feet to the east. The number of parking spaces remains the same, and the RIDEM-confirmed wetland edge is shown. Mr. Juhr asked what the benefit of moving the driveway would be. Mr. Bazzett stated that it would increase sight distance and decrease impervious space. Mr. Juhr asked how much sight distance was lost on other side. Mr. Bazzett stated that he is not sure of the exact number, but there was already more than 500 ft. available.

Mr. Denizard asked if the Planning Board had any input into the changes. Mr. Shekarchi stated that the application has to go back to the Planning Board for development plan review, so any changes will be reviewed by the Planning Board. Mr. Jühr questioned whether, since the plans have been revised, the applicant should go back to the Planning Board. Mr. Rossi explained that it is a two-tiered process: the Site Plan Review is conducted by the Planning Board, at which they will look at everything concerning the application. The Zoning Board's jurisdiction is limited to granting a Special Use Permit. Mr. Jühr stated that he needs to be sure there are no safety issues. Mr. Rossi replied that the Zoning Board should be looking to the use, and the design of site is for the Planning Board. Mr. Jühr not comfortable granting the use if there is a chance of any safety issues.

Mr. Shekarchi stated that the Planning Board can mitigate traffic issues, and that the Zoning Board can put stipulations on its approval of the Special Use Permit. Mr. Denizard stated that the Planning Board referred the applicant to the Zoning Board based on a different set of plans, and now that there is a new set of plans, it is a new project and in his opinion, the Planning Board should look at the drawings and give its approval of this design. Mr. Rossi said that the issue for the Zoning Board is the use of the property, and the design is ancillary. Mr. Jühr asked the applicant why, if the traffic impact has no bearing on the special use, they submitted new plans. Mr. Shekarchi stated that if there are problems with the design, the Planning Board will deny the application, even if the Special Use

Permit is approved. Mr. Rossi advised the Board that their review should be looking at the use, per section 17.3.2 in the Zoning Ordinance (Precedence of Approval between the Planning and Zoning Boards). Mr. Juhre asked if they had received a recommendation from the Planning Board. The Board identified a memo from Town Planner Michael Phillips, stating that the Planning Board had made a motion to send the applicant to the Zoning Board to seek a special use permit, with the understanding that they will return before Planning Board for development plan review on March 6, 2008. This memo was included in the Zoning Board's packet. Mr. Rossi stated that an applicant getting the special use permit first seems to be the usual way to proceed on this type of application.

Mr. Shekarchi asked if the Board had chosen a peer reviewer for the traffic impact analysis. Mr. Kearns stated that he had received and submitted copies of a qualification statement from Commonwealth Engineers, but that the Board had not made a decision yet. Mr. Kearns stated that he has worked with them in the past and they have an excellent track record. The Chair stated that this qualification statement was the only one formally presented to the Board. Mr. Kearns made a motion to designate Commonwealth Engineers as the firm to conduct the peer review of the applicant's traffic impact analysis. Mr. DiNunzio seconded the motion. Mr. Juhre asked if they have performed traffic studies for the town in the past. Mr. Kearns was not sure. Mr. Denizard asked if there was a scope of work developed for the peer review, (format or documents to be used in the

review). Mr. Rossi stated that he is not aware of a specific scope of work, but stated that the Board should ask Commonwealth to look at the documents submitted as part of the record for this application, not perform its own study. Mr. Rossi said that they should consider everything in record in their review and that they can also contact Mr. Desmond for additional information of clarification. Mr. DiNunzio asked if they would visit the site to confirm the data in the documents. Mr. Kearns stated that the peer review should confirm that the approach that the traffic engineer took was legitimate and give their opinion on that, not a detailed report. They should be looking for missing information or errors. Mr. Denizard pointed out that with different documents submitted, the reviewers should be sure that they look at the most recent information. Mr. Juhr asked to add to the motion to include that both the original plan and the revised plan be reviewed and that the conclusion include a comparison of both plans. Mr. Kearns asked why they should compare the sets of plans. Mr. Juhr stated that it would be to determine whether the first plan was inferior. Mr. Kearns amended his motion to specify that in the peer review, the most recent traffic study and any prior studies, revised site plan, and any prior documents submitted will be in prevue of the peer reviewer. Mr. DiNunzio seconded the amendment. Mr. Juhr asked Mr. Desmond to confirm the safety as presented in the submitted analysis. Mr. Juhr asked Mr. Desmond to clarify that his report found no detriment to safety. Mr. Desmond stated that according to his study, the traffic will have a Level of Service D for traffic leaving site in

afternoon/evening peak hours and on Sundays. Mr. Kearns added to the motion, stating that the peer review should be focusing particularly on aspects of the study affecting traffic safety. Mr. DiNunzio seconded this amendment. Zoning Board vote was as follows: AYE: Mr. Marcantonio, Mr. Juhr, Mr. Kearns, Mr. Denizard, Mr. DiNunzio.

Mr. Shekarchi asked if the Board had received a price and time frame for the study from Commonwealth Engineers. Mr. Kearns stated that he had not yet received this information. He will call Steve Clark, who is the principal on this project and have him communicate with regard to these questions. Mr. Rossi advised the Board to designate a contact person to communicate with the peer reviewer. He also asked that when the information of price and time frame for the peer review is received that the designated contact send it to Mr. Shekarchi and the Board, so the firm can get going on the review. Mr. Juhr made a motion that Mr. Kearns act as the primary liaison between Mr. Shekarchi, the Board, and the peer reviewer, with the Chair acting as back up. Mr. DiNunzio seconded the motion, with all in favor.

Mr. Kearns made a motion to continue the public hearing to October 8, 2008. Mr. DiNunzio seconded the motion, with all in favor.

The Chair called for a recess at 8:15 pm and called the meeting back to order at 8:31 pm.

IV. Continued application of Ryan Brouillette, requesting to remove earth material (gravel), which will require the granting of a Special Use Permit, per section 5.6.3.5. Locus is 1028 Providence Pike, Plat 11, Lot 48.

Ryan Brouillette was sworn in by the court stenographer. Mr. DiNunzio asked if what had been submitted to the Board was a new plan, as it appears to have the same date. Mr. Rossi stated that the new exhibit is a revision of the original plan, which was dated June 3, 2008. The revision is dated September 8, 2008 and the comments added the Board requested have been added. The notes address the restoration plan and the elimination of vertical slopes in excess of 5 feet.

The Chair asked Mr. Benoit if he is satisfied with the revisions. Mr. Benoit stated that he is, and that he will make sure the yard is graded according to the plan.

The Chair asked if anyone was present to speak for or against the application. There was no one present.

Mr. Kearns made a motion to approve the revised site plan based on the addition of the restoration plans and that the Building Official will confirm that the plan is carried out as shown, with the Findings of Fact to be detailed in a written decision to be later voted on by the Board. Mr. DiNunzio seconded the motion. Zoning Board vote was

as follows: AYE: Mr. Marcantonio, Mr. Juhr, Mr. Kearns, Mr. Denizard, Mr. DiNunzio. Special Use Permit was granted, with a vote of 5-0.

V. Continued application of Pound Hill Office & Business Park, LLC, requesting to open and operate a daycare center and an indoor and outdoor commercial recreation facility, which will require the granting of a Special Use Permit, per sections 5.4.4 (2A) Day Care, 5.4.5 (1.2) Other Outdoor Commercial Recreation, and 5.4.6 (7) Indoor Commercial Recreation. Locus is 621 Pound Hill Road, Plat 8, Lot 299.

Attorney Chris O' Connor was present for the applicant. He reviewed the previous testimony, presented before the Board on August 19. At the conclusion of that meeting, he had asked the Board for favorable consideration of the applicant's request, but the meeting adjourned because of the late hour. Mr. O'Connor stated that he had no further testimony to present. The Board continued the public hearing and its deliberation. The Chair asked if anyone was present to speak for or against the application. There was no one present.

The Chair asked about Mr. Bannon's recommendation for clearing of vegetation in order to increase sight distance and when that will happen. Mr. Sangermano stated that it can be done at any time, but out of courtesy to Mrs. O'Donnell, they were waiting for the last possible minute. The clearing was Planning Board condition of

approval on the site plan, but Mr. Sangermano stated that since there were no tenants yet, they did not complete the clearing. He added that even if approval is granted by the Zoning Board, the day care wouldn't open until after the first of next year.

Mr. Kearns expressed his concern that since the majority of the property will be used by children for recreation and education, he would like to be sure that future tenants won't be detrimental to the health, safety and welfare of the children. Mr. Sangermano state that the remaining portion of the building is not designed for manufacturing use, as there are no loading docks. Mr. Kearns asked if DCYF would be able to review potential tenants to be sure there were no materials, such as toxic resins in the building. Mr. Sangermano stated that DCYF would not review the potential tenants, but the fire marshal would. He added that DCYF will be conducting yearly inspections of the facility. Mr. Jühr asked about the type of clients Mr. Sangermano envisioned using the remaining portion of the building. Mr. Sangermano stated that he would like to keep with the recreation and children theme, including a sports shop and perhaps a dance studio. He is not looking for manufacturing clients. Mr. Denizard asked if the units in the building are separated by firewalls. Mr. Sangermano stated that they are, and additionally, they are all fully sprinklered.

Mr. Kearns made a motion to approve the portion of application regarding the day care, with all plans to be conformed to as

presented, based on the Findings of Fact to be detailed in a written decision to be later approved by the Board, with the following conditions: 1) that the areas specified by the applicant's engineer be properly cleared and maintained so that the traffic sight distances for ingress and egress specified in the engineer's traffic report are fully achieved, 2) that the areas so specified continue to be properly maintained so that the said sight distances are not in any way reduced, and 3) that the subject building shall not be occupied or otherwise shall not be used as a daycare center until the applicant's engineer certifies in writing to the Zoning Inspector that such area is adequately cleared to achieve the said traffic sight distances for ingress and egress as specified in the said engineer's traffic report. Mr. Juhr added that the Planning Board can add any other safeguards regarding traffic. Mr. Juhr seconded the motion. Zoning Board vote was as follows: AYE: Mr. Marcantonio, Mr. Juhr, Mr. Kearns, Mr. Denizard, Mr. DiNunzio. Special Use Permit was granted, with a vote of 5-0.

The Chair stated that he had been contacted by Conservation Commission, who has concerns with the outdoor recreation portion of the application. He would like to wait to decide on this portion of the application until he can get the full comments from the Conservation Commission.

Mr. Kearns made a motion to approve the Special Use Permit for Indoor Commercial Recreation and related parking as noted on plans,

except for the parking around the area for the proposed outdoor recreation, based on the Findings of Fact to be detailed in a written decision to be later approved by the Board, with the following conditions: 1) that the areas specified by the applicant's engineer be properly cleared and maintained so that the traffic sight distances for ingress and egress specified in the engineer's traffic report are fully achieved, 2) that the areas so specified continue to be properly maintained so that the said sight distances are not in any way reduced, and 3) that the subject building shall not be occupied or otherwise shall not be used as a daycare center until the applicant's engineer certifies in writing to the Zoning Inspector that such area is adequately cleared to achieve the said traffic sight distances for ingress and egress as specified in the said engineer's traffic report. The Chair said that the Board will deal with the parking area around the proposed outdoor recreation facility portion of the application after hearing from the Conservation Commission. Mr. DiNunzio seconded the motion. Zoning Board vote was as follows: AYE: Mr. Marcantonio, Mr. Jühr, Mr. Kearns, Mr. Denizard, Mr. DiNunzio. Special Use Permit was granted, with a vote of 5-0.

Mr. O'Connor expressed his concern that the Board has approved the day care which has an outdoor component, and out of an abundance of caution, he would like to clarify whether the postponing of deciding on outdoor recreation will affect the approval for the day care use. Mr. DiNunzio made a motion that, as clarification, the understanding that the play area directly related to daycare is included in the motion

to approve the day care use. Mr. Kearns seconded the motion. Zoning Board vote was as follows: AYE: Mr. Marcantonio, Mr. Juhr, Mr. Kearns, Mr. Denizard, Mr. DiNunzio.

Mr. Sangermano asked if he could get a copy of the concerns of the Conservation Commission before the next meeting. The Board agreed to forward the information to Mr. Sangermano. Mr. Kearns made a motion to continue the meeting to October 8, 2008. Mr. DiNunzio seconded the motion, with all in favor.

Mr. Kearns made a motion to adjourn at 9:18 pm. Mr. Denizard seconded the motion, with all in favor.